

OPERATIONS MEMO

For Public Release

No : 1127

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SUBJECT: Resolving and Reducing Waiver of Limitation Errors

I. PURPOSE

The purpose of this operations memo is to provide new guidelines and procedures to be followed for the preparation, review, tracking and reporting of Form BOE-122, Waiver of Limitation.

II. BACKGROUND

As discussed in Audit Manual section 0215.00, Form BOE-122, Waiver of Limitation, is a legal agreement between the taxpayer and the Board. By signing this document, the taxpayer will extend the statute of limitations for the period indicated on the form. This allows the Board to examine the taxpayer's records and possibly assess additional tax for the periods which otherwise would expire under the statute. In addition, a valid waiver will allow any credits in the period indicated on the form to be offset against any tax liability and extend the period in which a taxpayer may file a timely claim for refund.

A. Current Documentation and Preparation of Waivers

Currently, the Audit Manual provides the following guidelines:

1. Audit Supervisors are to review and initial waivers/waiver extensions before they are presented to the taxpayer (Section 0215.16).
2. A minimum of three copies will be prepared. These are distributed as follows: original to Headquarters with audit report, first copy stays with audit working papers, and second copy to the taxpayer (Section 0215.17).
3. The auditor will provide a copy of the AUD MC screen with each waiver/waiver extension.
4. The auditor should present the printout to the audit supervisor when requesting the supervisor review and initial the waiver (Section 0215.17).
5. The auditor should highlight the audit period on the printout and include the printout in the audit working papers (Section 0215.17).

B. Waiver Errors

Despite the above procedures, errors continue to occur. The four leading types of waiver/waiver extension errors, listed in order of occurrence, are as follows:

1. Waiver extension(s) not obtained or obtained after the period(s) had expired.
2. Error in the preparation of a waiver extension (i.e., the original/initial period and/or first extension is dropped from the succeeding extension or the extension through date is incorrect.)
3. Errors in the preparation of the original waiver (i.e., error in identifying the proper period(s) expiring due to statute).
4. Initial waiver for expiring period(s) not obtained or obtained after the period had expired.

III. New Guidelines for the Documentation and Preparation of Waiver/Waiver Extensions

To reduce the number of waiver/waiver extension errors, the new guidelines/procedures listed below should be followed.

A. Auditor's Responsibility

Auditors must follow the guidelines as set forth in Audit Manual section 0215.00 with respect to the preparation and documentation of a Waiver of Limitation. The auditor must:

1. Ensure the waiver/waiver extension is accurately prepared to secure expiring periods. The auditor must pay specific attention to waiver extensions with regard to the original waiver and the periods for which the extension is being taken.
2. Document the reason for requesting the waiver on the BOE-414-Z, Assignment Contact History (Section 0215.16). Also, document on the BOE-414-Z:
 - a. The date the BOE-122 was approved by the Audit Supervisor (0215.16),
 - b. The date the waiver was mailed or hand delivered,
 - c. The date the waiver was signed by the taxpayer, and
 - d. The date a copy of the signed waiver was returned to the taxpayer (Section 0221.06).
3. Provide a copy (printout) of the AUD MP screen (instead of the AUD MC) to the Audit Supervisor with each waiver and waiver extension request. The AUD MP screen reflects changes in reporting basis and is a valuable tool when identifying reporting periods for accounts that report on an irregular basis.
4. Highlight the audit period on the AUD MP printout provided to the Audit Supervisor and include the printout in the audit working papers as a memo schedule.

5. If the signature on the waiver is other than a corporate officer, partner, or owner, a copy of the written power of attorney must be attached to the waiver(s) that is transmitted to Headquarters (Section 0215.13). A copy of the power of attorney must also be attached to the waiver(s) in the audit working papers, and to the waiver(s) maintained in a District file (see Distribution below).
6. If a waiver is returned to the auditor via mail, the postmarked envelope must be retained with the waiver/waiver extension that is included in the audit working papers. If the waiver was obtained in the field, the auditor must ensure that the waiver is date stamped upon returning to the office.

B. Audit Supervisor's Responsibility

1. The Audit Supervisor is responsible to ensure that field audit staff has timely requested and obtained a valid waiver/waiver extension(s) from each taxpayer with respect to assigned audits with period(s) expiring due to statute.
2. Generally, unless there are circumstances such as a close out, an audit period should encompass at least twelve quarters. However, Audit Supervisors may approve the decision to allow a period(s) to expire if the amount is immaterial or no tax liability exists and there is a good business reason to do so. Comments should be made in the audit report (414Z) as to the reasons the period(s) were allowed to expire and/or if an audit is completed with less than 12 quarters.
3. Audit Supervisors are to review and initial all waiver/waiver extensions before they are presented to the taxpayer. Before initialing the waiver/waiver extension, the Audit Supervisor must review each waiver/waiver extension to ensure it properly secures all expiring periods.

C. District Principal Auditor's Responsibility

1. The District Principal Auditor is responsible to ensure that Audit Supervisors monitor and review audit inventory assigned to field audit staff to ensure that all waiver/waiver extensions have been obtained that properly secure expiring periods.
2. The District Principal Auditor is responsible to ensure that all inventory in district review (e.g., audits, FBO) contains a valid waiver/waiver extension that properly secure expiring periods.

D. Distribution

An original and three copies of the waiver/waiver extension will be prepared and distributed as follows:

1. Original to Headquarters with audit report (audit control responsibility)
2. First copy retained in audit working papers (auditor responsibility)
3. Second copy to taxpayer (auditor responsibility), and
4. Third copy for retention in a district file (audit control responsibility).
This copy must be retained until the audit has been determined.

Maintaining a third copy in a district file will allow for the Audit Supervisor's easy access to each waiver for quarterly verification purposes.

E. Posting a BOE-122, Waiver of Limitation - AUD MP

When a waiver/waiver extension is received from the taxpayer, the district must timely post the waiver/waiver extension information into the AUD MP screen. It will be at the District Principal Auditor's decision as to whom posts this information. Timely means the date on which the signed waiver is received from the taxpayer or the date the auditor returns to the office.

F. District Administrator Quarterly Review Responsibility

On a quarterly basis, the District Administrator must ensure that all waiver/waiver extensions have been obtained that secure expiring periods with respect to audit inventory assigned to field audit staff or in district review. The District Administrator may delegate this responsibility; however, the District Administrator is accountable for any period(s) that expire under the statute due to waiver/waiver extension errors. The District Administrator may be asked to provide additional information regarding the circumstances leading to any lost period(s) and to provide information on any action taken to avoid future occurrences.

G. District Reviewer's Responsibility

In the course of reviewing an audit, if the District Reviewer discovers a waiver/waiver extension error, the district must immediately notify (email) the Field Support & Evaluation Unit within the Tax Policy Division of the error. It will be the District Administrator's decision as to who provides the notification, i.e., District Reviewer, District Principal Auditor, or District Administrator. The district will provide the name of the taxpayer, account number, DMA, audit period, hours charged, period(s) lost, tax and/or measure lost, reason for loss, date the audit was reviewed, a notation on whether the waiver/waiver extension was initialed by the supervisor, and the date the waiver error occurred.

The date the waiver error occurred will be determined by the following:

1. If no waiver was obtained, three years from the date the return was due is used as the waiver error date.
2. If no extending waiver to previous waiver(s) was obtained, the statute expiration date indicated on the previous waiver is used as the date the error occurred.
3. If the waiver itself was in error, the date the waiver was signed is used as the error date.

H. Field Support & Evaluation Unit Responsibility

The Field Support & Evaluation Unit will immediately notify (email) the Chief of Field Operations and/or the Collections and Third District Operations Manager regarding period(s) lost due to waiver/waiver extension errors. On a quarterly basis, the Field Support and Evaluation Unit will provide a written report to the Chief of Field Operations and the Collections and Third District Operations Manager detailing all lost periods.

I. Chief of Field Operations/Collections and Third District Operations Manager Responsibility

Upon receiving notification (email) from the Field Support & Evaluation Unit on a loss of a period(s) due to a waiver/waiver extension error, the Chief of Field Operations, Assistant Chief of Field Operations and/or the Collections and Third District Operations Manager may at their discretion request the District Administrator to provide information on the lost period(s), such as how/why this error occurred, whether or not any action(s) is deemed necessary, and what steps have been taken to prevent this occurrence in the future.

IV. TOOLS AVAILABLE FOR THE PREPARATION & TRACKING OF WAIVERS

A. Power Point Presentation

A Power Point class on waiver preparation has been provided to each Board office. This class should be provided to each new auditor within 3 months of employment. Documentation of the employee's attendance at the presentation including the sign-in sheet containing the employee's signature should be maintained in the employee's training history file.

B. Start 21

The Start 21 program is an Excel workbook that contains a set of Board-approved audit forms that are electronically linked together for use by field auditors. The purpose of the program is to standardize the electronic audit forms templates being used in the field and to give SUTD an efficient mechanism to quickly update these templates as form revisions are made. While use of the Start 21 program is not mandatory, Start 21 is the only approved audit form template package and is included in the Audit Reference CD distributed to each field office. Form BOE-122, Waiver of Limitation, is included in Start 21. Auditors using Start 21 must manually enter taxpayer and audit-related information onto the first screen. The program will automatically insert the account number, owner name, case id, and auditor's name on the BOE 122, Waiver of Limitation form. For accounts on a regular reporting basis, Start 21 will also automatically insert the periods expiring due to statute and the extension through dates (January 31, April 30, July 31, and October 31). Although this program is intended to reduce the number of waiver/waiver extension preparation errors, supervisors and auditors should not rely solely on the automated insertion dates, but should review each waiver/waiver extension before it is initialed by the Audit Supervisor and presented to the taxpayer.

C. IRIS Operating Guide for Audit Supervisors – Audit Statute Date Report (AUD ST)

This guide can be found at <http://eboe/iris/oeiris/GeneralReference/auditsup.doc>. This user guide has been updated to include detailed instructions on the use of the Audit Statute Date Report (AUD ST). The AUD ST has been modified for easier use and is an invaluable tool for tracking the status of waivers. Although the district may choose any method it deems appropriate, it is recommended that the AUD ST be used to track waiver status.

A listing of Life Cycle (LC) Events can be located at the AUD ET screen. This screen lists all of the LC Events, their sequence numbers and their descriptions.

Any questions regarding the IRIS Operating Guide for Audit Supervisors should be referred to the Policy Development Section.

D. IRIS User Guides

The IRIS User Guides (UG) provide information on individual IRIS screens, in regard to their purpose, processing and field descriptions. A list of Audit User Guides (AUD UGS) is found at <http://eboe/IRIS/OEIRIS/iris%20ug/AUD/aud.shtm>. These guides provide detailed descriptions for the most-used screens in job code order and may assist in waiver/waiver extension verification.

E. Browsing Statute Dates:

The following IRIS jump codes/screens specifically contain statute date information:

AUD BC	Browse assigned District Inventory
AUD BI	Browse District Inventory Not Yet Assigned
AUD BW	Browse Entire HQ Inventory by Statute Date
AUD ST	Audit Statute Date Report

F. Audit Inventory Program

Although the use of the Audit Inventory Program is not required, some districts use it as a tool for the tracking of waiver expiration dates. One of the required fields in the program is “Current waiver expiration date.” Every field office has access to the Audit Inventory Program on the LAN; however, many may not be aware of the waiver-tracking feature.

V. **PHONE BILLINGS**

The guidelines for phone billings are set forth in Audit Manual section 0215.27. The phone billing guidelines must be followed when a period is about to expire due to the statute of limitation, an additional liability for the period is recommended, and a waiver/waiver extension has not been obtained from the taxpayer. The Audit Determination and Refund Section must be contacted to request a phone billing for the expiring period(s). However, only under extraordinary circumstances should a telephone billing be requested by a district within the last five (5) working days of the month.

When a taxpayer chooses not to sign a Waiver of Limitation and the audit will be phone billed, new form letter BOE-79-G, “Letter to Taxpayer Prior to Phone Billing” must be sent to the taxpayer by the District Principal Auditor before the phone billing is requested. The new form is

available on eBOE at <http://eboe/docs/Forms/79g.dot>. The new letter advises taxpayers of the upcoming bill and confirms the auditor's discussion of why the early billing is necessary.

VI. TAX AMNESTY

Senate Bill 1100 (Chapter 226, statutes of 2004) was signed into law on August 16, 2004, and in part, requires the Board of Equalization to implement a tax amnesty program for sales and use taxes. The tax amnesty program establishes a ten-year statute of limitation on liabilities assessed by the Board on or after April 1, 2005, for eligible tax reporting periods in which taxpayers underreported or did not report their tax liabilities. The ten-year statute applies to eligible tax reporting periods for which a Notice of Determination could have been issued as of August 16, 2004 (the day the legislation was enacted) and keeps these periods open ten years from the due date of the tax. The expanded statute of limitation does not reopen eligible tax-reporting periods that were already closed on August 16, 2004. As applicable, a notice of determination issued by the Board on or after April 1, 2005, may be issued within ten years from the due date of the tax. All audits with waiver errors, i.e., lost periods, within eligible tax reporting periods, should first be brought to the attention of and reviewed by the Field Support and Evaluation Unit within the Tax Policy Division (TPD) and the Chief of Field Operations/Third District Operations Manager before discussed with the taxpayer. The facts and circumstances of each case will be reviewed for the application of the ten-year statute of limitations. After the case has been reviewed, the TPD or the Chief of Field Operations/Third District Operations Manager will advise the respective district on how to proceed. Staff should continue to request and secure waivers of limitation for all periods expiring due to statute. For further information regarding tax amnesty, please refer to Operations Memo 1122, entitled "Senate Bill 1100 – Tax Amnesty."

VII. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.

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